

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LEROY DESHAWN FOSTER,

Plaintiff,

v.

EMILY BAILEY,

Defendants.

Case No. 1:23-cv-13191

Honorable Thomas L. Ludington
United States District Judge

Honorable Elizabeth A. Stafford
United States Magistrate Judge

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION AND DISMISSING CASE**

On August 13, 2024, Magistrate Judge Elizabeth A. Stafford issued a report (R&R) recommending this Court dismiss this action *sua sponte* under 28 U.S.C. § 1915A(b). Shortly after, Plaintiff Leroy Deshawn Foster filed a motion for mandamus seeking the appointment of counsel to assist with his case. Neither Party objected to Judge Stafford’s R&R, which contains no clear error. So Judge Stafford’s R&R will be adopted, Plaintiff’s Complaint will be dismissed, and Plaintiff’s Mandamus Motion will be denied as moot.

I.

On December 14, 2023, Plaintiff Leroy Deshawn Foster—while confined at Gus Harrison Correctional Facility in Adrian, Michigan—filed a *pro se* 42 U.S.C. § 1983 Complaint against Defendant Emily Bailey, seeking an order requiring “the proper officials” to transfer him to a new facility. ECF No. 1 at PageID.1. Plaintiff’s particular claim is unclear. *See id.* at PageID.3–4. But construed liberally, the Complaint appears to allege that Defendant was deliberately indifferent to Plaintiff’s medical needs in violation of his Eighth Amendment rights. *See id.* at PageID.3. Specifically, Plaintiff asserts that he is hard of hearing, and he contacted Defendant—a mental

health professional—requesting a transfer to a facility to accommodate his hearing impairment. *Id.* In response, Defendant allegedly contacted his treatment team, and the treatment team denied his transfer request because he is not “totally deaf.” *Id.*

The same day Plaintiff sued, he applied to proceed *in forma pauperis*. ECF No. 2. On January 11, 2024, Magistrate Judge David R. Grand reviewed and granted Plaintiff’s application to proceed as a *pauper*. ECF No. 5.

II.

On July 10, 2024, this Court referred all pretrial matters to Magistrate Judge Elizabeth A. Stafford. ECF No. 14. On July 26, 2024, Plaintiff filed a motion seeking the appointment of counsel to help with his case. ECF No. 16. Judge Stafford denied that motion on July 30, 2024. ECF No. 17. Plaintiff has since filed a “motion for mandamus,” once again seeking appointed counsel. ECF No. 21.

On August 13, 2024, Judge Stafford screened Plaintiff’s case under the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915A(b), issuing a report (R&R) recommending that this Court dismiss the case *sua sponte* for failure to state a claim. ECF No. 19 at PageID.94–97. Specifically, the R&R correctly observed that in § 1983 actions, “a plaintiff must show ‘that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.’” *Id.* at PageID.95–96 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Pineda v. Hamilton Cnty.*, 977 F.3d 483, 490 (6th Cir. 2020)). Because Plaintiff alleges only that Defendant “relayed the request to others but does not assert she made or influenced the decision to deny the request,” the R&R reasoned, Plaintiff doesn’t sufficiently allege Defendant’s “personal involvement” in the alleged constitutional violation. *Id.* at PageID.96 (collecting cases where this defect warranted dismissing similar claims).

III.

Judge Stafford provided the Parties 14 days to object to the R&R, ECF No. 19 at PageID.97–98, but the Parties did not do so. Thus, they have forfeited their right to appeal Judge Stafford’s findings. *See Berkshire v. Dahl*, 928 F.3d 520, 530–31 (6th Cir. 2019) (citing *Thomas v. Arn*, 474 U.S. 140, 149 (1985)). There is no clear error in Judge Stafford’s R&R. So the R&R, ECF No. 19, will be adopted, this case will be dismissed, and Plaintiff’s Mandamus Motion, ECF No. 21, will be denied as moot.

IV.

Accordingly, it is **ORDERED** that Magistrate Judge Elizabeth A. Stafford’s Report and Recommendation, ECF No. 19, is **ADOPTED**.

Further, it is **ORDERED** that the above-captioned case is **DISMISSED**.

Further, it is **ORDERED** that Plaintiff’s Mandamus Motion, ECF No. 21, is **DENIED AS MOOT**.

This is a final order and closes the above-captioned case.

Dated: January 15, 2025

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge